IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3791 of 1994
With
SPECIAL CIVIL APPLICATION No. 5198 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEMBER SECRETARY - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
SCA NO.3791/94
MR DG CHAUHAN for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3.
MR HS MUNSHAW for Respondent(s) : 4,
MR KI SHAH for Respondent(s) : 5,

SCA NO.5198/94:
MR HS MUNSHAW for the petitioner
MR DG CHAUHAN for respondent No.1,2, 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/12/2005

ORAL JUDGMENT

Special Civil Application No.3791 of 1994 has been filed by the Gujarat Water Supply and Sewerage Board challenging two separate orders, both dated 15th February 2004 passed by the Collector, Godhra. On the other hand, Special Civil Application No.5198 of 1994 has been filed by the Godhra Municipality through its Chief Officer seeking to challenge the decision dated 1.12.93 purported to have been taken by the President and some of the councillors of the Municipality to take over the water supply schemes from the Gujarat Water Supply and Sewerage Board (hereinafter to be referred to as "the Board").

2. Briefly stated, the controversy involved in these petitions pertained to the responsibility to maintain water supply to the Godhra Town. Disputes arose between the parties, namely, the Board on the one hand and the Godhra Municipality represented through the Chief Officer on the other. It was the stand of the Board that the responsibility of maintaining and managing the water supply was required to be handed over to the Municipality whereas the Municipality through the Chief Officer resisted such a move. In the process, Collector, Godhra passed two separate orders, both dated 15.2.94. By the

said orders in purported exercise of powers under section 258(1) of the Gujarat Municipalities Act, the Collector was pleased to set aside the decision of the Godhra Municipality taken on 1.12.93 by which it was indicated that the charge of water supply scheme of Godhra Town was taken over by the Nagarpalika. By a separate order, also dated 15.2.94, the Collector further provided that the arrangement for providing water and sewerage to the Town prior to 1.12.93 should be immediately restarted.

3. Both the sides approached this Court under somewhat different circumstances. The Board approached this Court challenging the above mentioned orders dated 15.2.94 passed by the Collector. Godhra Municipality, in the meantime was being looked after by the Chief Officer. A petition being Special Civil Application No.5198 of 1994 came to be filed in which, as mentioned earlier, the stand of the petitioner therein was that the Board cannot divest itself of the responsibility of providing essential supplies and that appropriate action should be taken to implement the orders passed by the Collector and to set aside the decision of the Nagarpalika dated 1.12.93.

4. It appears that on 25th April 1994 both these petitions were heard at considerable length before the learned single Judge and detailed submissions were made by both the sides. Having heard the respective counsel appearing for the parties, the learned single Judge admitted the petitions. It was observed that status quo granted earlier by the Court on 31.3.94 shall continue till further orders. It appears that certain criminal proceedings were initiated against the officers of the Board and the Court provided that no final order therein shall be passed till final disposal of the petitions. The learned single Judge was further pleased to observe in the said order that the orders were passed by the Collector without giving any opportunity of being heard to the Board. It was observed that before passing the order, party who is adversely affected must be heard. It was, therefore, observed that apart from other grounds, on this ground alone, the petition was required to be admitted. It was further observed that the scheme was taken over by the Municipality on 1.12.93.

5. Learned advocate Shri Chauhan appearing for the Board in Special Civil Application No.3791 of 1994 submitted that the disputes were transitional in nature

and thereafter the scheme has been finally handed over to the Municipality by the Board and since then the Municipality is managing the water supply and sewerage position in the Godhra town. He further submitted that at the relevant time the Collector passed the impugned orders without hearing the petitioners and that the orders are required to be quashed and set aside. He also submitted that pursuant to the orders passed by the Collector, criminal proceedings were initiated against the officers of the Board.

6. Having considered the submissions and having considered the material on record, on the ground that the Collector passed the impugned orders dated 15.2.94 without hearing the petitioner-Board, Special Civil Application No.3791 of 1994 is required to be allowed. I have also taken note of the fact that the problem of essential supply of water had arisen only for a short while and that subsequently all issues got sorted out between the parties. One may also take note of the fact that this litigation is between the Government and its agencies internally. No useful purpose will be served in prolonging these petitions at this point of time especially when the issues that had arisen for a short

period got resolved subsequently. While disposing of Special Civil Application No.3791 of 1994, the orders passed by the Collector, both dated 15.2.94 are quashed.

7. In view of the above order, learned advocate Shri Chauhan for the Board submitted that he would pursue the criminal proceedings before the competent court and does not press for quashing of the proceedings in the present petition.

8. In view of the order passed hereinabove, no separate order is required to be passed in Special Civil Application No.5198 of 1994.

9. In the result, both the petitions are disposed of as above. Rule is made absolute to the above extent in Special Civil Application No.3791 of 1994 and rule is discharged in Special Civil Application No.5198 of 1994 with no order as to costs.

(Akil Kureshi, J.)

(vjn)